CrlA 797/98

112

CF0000059492

(2) D3(m)

APPEAL PRISONER

S.T.No. 300/96

No. 792 Name माडवी बुधु

Father's Name माडवी डोकड़ Resident सा० किन्दोळ थाना- दन्तेवाड़ा जि० बस्तर

Age 26 वर्ष Sentenced to आजीवन कारावास on 17-9-97

Under Section 302 भा०दं०वि० by श्री आर. के. पिपरतव सत्र-न्यायाधीश जगदलपुर

It is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears If the legal practitioner does not appear within seven days he may be heard at all if legal practitioner the court may proceed at once with the case and will not be obliged to give a bearing to the legal practitioner who should appear.

1. Date of application for copy of Judgement :- NO.
2. Date of which copy received :- 17-9-97
3. Date on which appeal sent :- 25-9-97
4. Whether the prisoner wished to be represented or not :- Yes / ~~No~~.

No. 792 Name माडवी बुधु पि० माडवी डोकड़

Continued in जिला Jail जगदलपुर

No. 743/आत्मवेदन Dated 25-9-97

Forwarded to the CHIEF JUDICIAL MAGISTRATE JAGDALPUR

with a copy of Judgement or order passed in the case for favour of transmission to the proper Applleate Court.

अधीक्षक
केन्द्रीय जेल/जिला जेल/उप जेल
जगदलपुर

Superintendent-Central / Distt. / Sub-Jail.

Date of receipt in C. J. M. Office. 26/9/97

with in time

Date of receipt of record to accompany. —

Memo of Appeal of the Appellate Court. —

No. 4(E) dated 29/9/97

Forwarded to the Addl Sessions Judge J.D.P.

G. R. MAGISTRATE

(महेन्द्र राठौर)
न्यायिक मजिस्ट्रेट
जगदलपुर

Date of receipt in Applieate Court

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश पत्रक

मामला क्रमांक G.A. 797/98 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

3-2-2006

Mr. Rajesh Jain, counsel for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor for the State/respondent.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, J: -

By this appeal, accused/appellant Madvi Budhu has questioned the legality of the judgment of conviction and order of sentence dated 17th September, 1997, passed by the Sessions Judge, Jagdalpur, in Sessions Trial No.300/96, whereby learned Sessions Judge after holding the accused/appellant guilty for commission of the murder of his wife Budhri convicted him under Section 302 of the I.P.C. and sentenced him to undergo imprisonment for life.

Case of the prosecution is that Madvi Aaytu (PW-4) lodged report Ex.P-8 in Police Station: Dantewada to the effect that on 27-2-1996 (Tuesday) night at about 12 O' clock his younger brother Budhu came with his girl child to his residence and while handing over the child to his wife Madvi Lakhi stated that he has murdered his wife Budhri by attacking with Badga (Mahuwa stick), now "you take care of the child", left the child in the lap of his wife and returned back to his wife. He along with his wife also went to the house of Budhu, they saw that he was sitting on the main door near the firepot, body of his wife was lying there, blood was oozing out of mouth & ear of Budhri and she was dead. He went to the house of neighbourers Baggu, Budhram, Masa & Budhram S/o Guddi and informed them. They also came and saw the body of Budhri, there on enquiry, Budhu informed that he demanded food from Budhri, she refused to give him food, and therefore he attacked her with Mahuwa stick. The body remained

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आदेश पत्रक

मामला क्रमांक G.A.797/98 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

there for whole night. In the morning Sarpanch & Panch were informed, they came and before them also Budhu made extra judicial confession.

After registering the case under Section 302 of the I.P.C., the Investigating Officer left for the scene of occurrence and prepared Panchnama of the body of Budhri Ex.P-1. Mahuwa stick was taken into possession under Ex.P-2, one read cloth stained with blood was taken into possession under Ex.P-3, blood stained soil & plain soil were taken into possession under Ex.P-4 and clothes of the accused were taken into possession under Ex.P-5. Body of Budhri was sent for post-mortem examination to Primary Health Centre, Dantewada, where Dr. B.K. Tirki (PW-1) conducted post-mortem and prepared post-mortem report Ex.P-7.

After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Dantewada, who in turn committed the case to the Sessions Judge, Jagdalpur for trial.

The prosecution in order to establish crime against the accused examined seven witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the prosecution evidence.

Learned Sessions Judge after hearing the arguments of Public Prosecutor and counsel for the accused, convicted and sentenced the accused as mentioned in para 1 of this judgment.

The homicidal death of Budhri is not in dispute.

As far as the involvement of the accused in committing the murder of his wife Budhri is concerned, conviction rests on the extra judicial confession made by the accused before his brother Madvi Aaytu (PW-4) and Madvi Lakhi (PW-5). Madvi Lakhi (PW-5) has turned hostile and has not supported the prosecution case. It is settled law that conviction can be based on extra judicial confession

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आदेश पत्रक

मामला क्रमांक G.A. 797/98 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

provided same is voluntary, true and prompt. Madvi Aaytu (PW-4), brother of the accused, even though in examination-in chief has not supported the prosecution evidence, but on cross-examination by the Public Prosecutor has stated that it is correct to say that the accused came with girl child to his residence and stated "keep the girl as I have murdered my wife Budhri with a club". It is also true that on enquiry by the villagers, Budhu made extra judicial confession that when Budhri did not provide him food, he assaulted her with a club, and on this, he lodged the report (Ex.P-8) in the Police Station. He further stated that since he forget about this fact, therefore he was not able to disclose the same. The F.I.R. (Ex.P-8) corroborates the above evidence of this witness and in the same, this witness mentioned that the accused made extra judicial confession before him. Further, the evidence of this witness lends support from the medical evidence, in which Dr. B.K. Tirki (PW-1) has stated that he conducted post-mortem on the body of Budhri on 29-2-1996, there was one abrasion on left eyebrow in the size of 3 x 2 x 1 cms., haematoma on left parietal region in the size of 7 x 5 cms., lacerated wound on the right parietal region above the right ear in the size 8 x 2 cms. deep up to the bone and left & right parietal bones were fractured. Injuries were ante-mortem in nature and death was homicidal as the cause of death was asphyxia due to head injury. His report is Ex.P-7.

Madvi Aaytu (PW-4) is the brother of the accused and there was no reason for this witness to implicate his brother in a false case. Moreover, nothing has come in the cross-examination that on account of animosity or for any other reason this witness has implicated his brother in a false case. Therefore, it is established that the accused was the author of the crime in question.

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आदेश पत्रक

मामला क्रमांक G.A. 797/98 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 4 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

As far as the question whether in the given circumstances offence under Section 302 of the I.P.C. was made out against the accused, learned counsel for the appellant argued that on the given facts and circumstances, offence against the accused does not travel beyond Section 304 Part-II of the I.P.C.

In order to appreciate the argument advanced by learned counsel for the appellant, we have perused the evidence. It has come on record that when Budhri refused to provide food to the accused, that enraged the accused and all of a sudden he picked up the Mahuwa stick and assaulted on the head of his wife Budhri as a result of which she received injuries. There is nothing on record, which shows that the accused assaulted Budhri with the intention to cause her death. He attacked Budhri all of a sudden without pre-meditation in a sudden quarrel. Therefore, offence against the accused does not travel beyond Section 304 Part-II of the I.P.C.

In the result, the appeal is partly allowed. Conviction and sentence awarded to the accused/appellant under Section 302 of the I.P.C. are set aside, instead thereof, the accused is convicted under Section 304 Part-II of the I.P.C. and sentenced to undergo imprisonment already undergone, as the accused has already undergone the sentence of nine years and eleven months. The accused be set at liberty forthwith, if not required in any other case.

Parties are entitled for certified copy of this order.

Sd/-
L.C. BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

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